



March 25, 2022

Krista Lee Carsner, Director
Fiscal Review Committee
Suite G-102, Cordell Hull Building
425 5th Avenue North
Nashville, TN 37243

Mike Perry, Chief Procurement Officer
Central Procurement Office, Department of General Services
22nd Floor, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243

Dear Director Carsner and CPO Perry:

The Department of Health, Division of Laboratory Services (DLS) is requesting sole source approval to establish a multi-year contract (3 years with 2 renewal options) with Illumina for the purchase of annual preventive maintenance, replacement reagents and parts, and technical support for six MiSeq instruments that perform whole genome sequencing.

DLS uses the MiSeq instruments in the whole genome sequencing section, as required by the Centers for Disease Control and Prevention, to identify and confirm bacteria, viruses, and other pathogens at the genome level. These instruments must receive annual maintenance to ensure they are working properly. In addition, DLS must have access to technical support and replacement parts in the event of a malfunction. Illumina is the only authorized party to provide service to these instruments with replacement parts and technical support. The total cost for five years is \$400,995.00.

We appreciate your approval to proceed with this contract and thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Piercey, MD, MBA, FAAP". The signature is stylized and includes a flourish at the end.

Lisa Piercey, MD, MBA, FAAP
Commissioner

Supplemental Documentation Required for Fiscal Review Committee

Instructions:

1. No contract or contract amendment will be placed on the Committee's agenda for consideration until this form has been fully completed and all back-up documentation has been submitted.
2. Please complete each section as it applies to contracts or amendments that are being submitted. Sections denoted with an asterisk (*) are considered mandatory. This information should provide for background information on previous actions, if applicable, that have taken place on the contract document and associated amendments.
3. Add rows as necessary.
4. Submit this document, any attachments, your summary letter, and contract documentation for review by the Fiscal Review Committee.
5. **Contact Name:** Enter first and last name of person to contact with questions about this document or any of the submitted information.
6. **Contact Number:** Enter the telephone number (including extension) of the contact person listed.
7. **Presenter's Name(s):** Enter the name of each person who will be presenting this request to the Committee.
8. **Edison Contract Number:** Enter the contract number issued by the Edison system for this document.
9. **RFS Number:** Enter the Edison system issued RFS number for this document.
10. **Original Contract Begin Date:** Enter the beginning date of the original contract or the proposed effective date for new contracts.
11. **Current End Date:** Enter the end date that is currently reflected in Section B.1. of this contract (prior to amendment request if applicable) or the proposed end date for new contracts.
12. **Current Requested Amendment Number:** Enter the amendment number (*if applicable*) that is currently being requested.
13. **Proposed Amendment Effective Date:** Enter the proposed effective date for the requested amendment (*if applicable*).
14. **Department Submitting:** Enter the title of the agency/department submitting this request.
15. **Division:** Enter the title of the division within the agency/department submitting this request.
16. **Date Submitted:** Enter the date the request was sent to Fiscal Review Committee staff.

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17. **Submitted Within Sixty (60) days:** Enter yes or no in this blank if request was submitted within 60 days of the proposed effective date.
18. ***If not, explain:*** Provide detailed rationale as to why the deadline for submission was not met. ***Please Note:*** Late submissions will be rolled for one meeting and placed at the end of the agenda.
19. **Contract Vendor Name:** Enter the officially registered vendor name.
20. **Current or Proposed Maximum Liability:** Enter the dollar amount that is reflected on the most current fully executed contract summary sheet and in Section C. 1 or the proposed maximum liability for new contracts.
21. ***For commodities contracts, Estimated Total Spend:*** Enter the estimated total expenditures for the contract if the contract does not have a “maximum liability.”
22. **Current Contract Allocation by Fiscal Year:** Enter the amounts reflected on the contract summary sheet and the corresponding FY. If no contract summary sheet, enter the estimated spend per fiscal year.
****NOTE:** Total of all these columns must add up to maximum liability or estimated total spend as reported in Section 20 or 21 of this document.
23. **Current Total Expenditures by Fiscal Year:** By using Edison enter the amounts that have been expended from this contract by fiscal year breakdown. Not applicable (NA) for new contracts.
24. **Explanation of surplus funds:** If the allocation exceeded the expenditure in any fiscal year, enter the explanation of each surplus funding year.
25. **Explanation of carry forward:** If agency/department has carried forward the surplus funds, enter the authority (and provide copy with this document) of the carry forward provision.
26. **Explanation of overspending contract allocation:** If agency/department has overspent the contract allocation, enter the reasons for excess expenditures and how the funding was attained.
27. **Contract Funding Source/Amount:** Enter the dollar figure in the appropriate category to reflect the source of contract funding.
28. ***If Other, please define:*** If a dollar amount is placed in the “other” category, please define the source represented.
29. ***If Interdepartmental, please define:*** If a dollar amount is placed in the “interdepartmental” category, please define all sources represented.

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30. **Dates of All Previous Amendments or Revisions:** Enter all dates of prior amendment and revision (*including Contract Summary Sheet revisions*) in this section.
31. **Brief Description of Actions in Previous Amendment or Revision:** Enter a brief summary of prior amendments or revisions next to the appropriate effective date of the amendment (e.g. increased maximum liability, added scope items, revised contract summary sheet to reflect funding change, etc.).
32. **Method of Original Award:** Enter the procurement method of original award if requesting amendment (e.g. RFP, Special Request).
33. **Projected Cost Prior to Award and Cost Determination Used:** Enter the total cost projected by the department prior to award and explain how the agency arrived at the estimate of expected costs.
34. **For ALL new sole-source contracts, list the number of potential vendors that could provide the service or goods being procured and why those other options were not considered:** List the number of potential vendors that could provide this good or service; efforts to identify reasonable, competitive procurement alternatives; and how the Department determined a sole-source contract was in the best interest of the State.

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*Contact Name:	Dr. Richard Steece	*Contact Phone:	615-262-6301		
*Presenter's name(s):	Olivia Spears, Lindsay Oliveras				
Edison Contract Number: <i>(if applicable)</i>	TBD	RFS Number: <i>(if applicable)</i>	N/A		
*Original or Proposed Contract Begin Date:	5/24/2022	*Current or Proposed End Date:	5/23/2025		
Current Request Amendment Number: <i>(if applicable)</i>		N/A			
Proposed Amendment Effective Date: <i>(if applicable)</i>		N/A			
*Department Submitting:		Health			
*Division:		Division of Laboratory Services			
*Date Submitted:		3/24/2022			
*Submitted Within Sixty (60) days:		Yes			
<i>If not, explain:</i>					
*Contract Vendor Name:		Illumina			
*Current or Proposed Maximum Liability:		\$400,995.00			
*Estimated Total Spend for Commodities:		N/A			
*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 22	FY: 23	FY: 24	FY: 25	FY: 26	FY: 27
\$6,683.50	\$80,199.00	\$80,199.00	\$80,199.00	\$80,199.00	\$ 73,515.50
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		

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*Contract Funding Source/Amount:			
State:		Federal:	100%
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A			
Method of Original Award: <i>(if applicable)</i>		Sole Source	
<p>*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?</p>		<p>The projected costs were determined by quote from the vendor.</p>	
<p>*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.</p>		<p>Illumina is the only vendor who can provide service with parts and technical support for the instruments. These instruments are required to perform CDC testing.</p>	



Invitation to Bid (ITB)
For Miseq Illumina
Event # 12075

1. Section 1 -- Background Information

- 1.1. To establish a multi-year contract for service and maintenance for six (6), Illumina MiSeq instruments used to sequence Deoxyribonucleic acid (DNA) of a bacterial or viral organism for identification or surveillance purposes.
- 1.2. **Accommodation for People with Disabilities**. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.
- 1.3. **Responses Due**. The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.

2. Award Criteria

- 2.1. **Single Award -- Lowest Cost**. A single contract will be awarded for all line items to the respondent whose response meets the requirements and criteria set forth in this ITB at the lowest cost.

3. Standard Terms of the Solicitation

- 3.1. **Respondent Registration**. Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:

https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST

- 3.2. **Respondent's Ability to Perform.** The State shall have the right to require evidence of the respondent's ability to perform the services or deliver the goods required pursuant to the terms and conditions of this ITB.
- 3.3. **Quality of Workmanship and Materials.** Unit price responses are requested on goods or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.
- 3.4. **Performance.** The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.
- 3.5. **Clarifications.** The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.
- 3.6. **Negotiations.** The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.
- 3.7. **Response Cancellation and Rejection.** The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except

pursuant to target pricing or best and final offer negotiations as specified in this ITB.

- 3.8. **Communications and Contacts.** Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

Tara Roark
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville TN 37243-1102
615-532-1837
Tara.Roark@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, respondents may alternatively contact:

Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as general, public information relating to this ITB (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--godbe-general-contacts.html> for contact information); and

The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and associated federal regulations:

Helen Crowley
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102
615-741-1035
Helen.Crowley@tn.gov

- 3.9. **Responses Submitted by Mail.** If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address:

Bidder Services
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102.

Failure to comply with these requirements may result in rejection of the response.

- 3.10. **Models Included in Response.** All goods identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.
- 3.11. **Respondent Certification** By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.
- 3.12. **Exceptions or New Terms or Conditions.** Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.
- 3.13. **Conflict of Interest.** The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:
- a. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - b. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 - c. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 3.14. **Specifications Govern.** Brands or model numbers identified in the specifications of this ITB are deemed to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.
- 3.15. **Firm Offer.** The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.
- 3.16. **F.O.B. Destination.** Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.
- 3.17. **Tax Exemption.** The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful

respondent shall pay all taxes lawfully imposed on it with respect to any goods or services delivered in accordance with this ITB.

- 3.18. **Prompt Pay Discount**. Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.
- 3.19. **Fixed Discount or Surcharge**. The percent discount or surcharge per line item must be fixed for the contract's term.
- 3.20. **On-site Inspection**. All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.
- 3.21. **Used Equipment**. When this ITB authorizes offers of used items, no used item is acceptable if serial numbers or any other manufacturer's identifying label or markings have been removed, obliterated, or changed in any way.
- 3.22. **Tennessee Contractor License**. Respondents shall be properly licensed as of the date it files a response to this ITB and shall provide evidence of compliance with all applicable provisions of the Contractors Licensing Act of 1994, Tenn. Code Ann. § 62-6-101, *et seq.* in providing the specified information within this ITB. Any response that does not comply with Tenn. Code Ann. § 62-6-119, when applicable, shall be rejected.
- 3.23. **Purchase of Materials for Highways or Roadways**. Respondents must comply with Tenn. Code Ann. § 54-5-135 when purchasing materials used for highway or road construction, resurfacing, or maintenance.
- 3.24. **Energy Star Products**. Any goods ordered by the State must be Energy Star certified and meet applicable Energy Star specifications for energy efficiency.
- 3.25. **Safety of Chemical Products**. All respondents awarded a contract must maintain, for all of its chemical products available under this Contract, a Safety Data Sheet ("SDS") on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge.
- 3.26. **Professional Licensure**. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a respondent provides for consideration and evaluation by the State as a part of a response to this ITB, shall be properly licensed to render such opinions. Upon submitting the response, the respondent (and respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any respondent to submit evidence of proper licensure.

- 3.27. **Department of Revenue Registration.** Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this ITB. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: <https://tntap.tn.gov/eservices/> **#1**
- 3.28. **Prohibition of Illegal Immigrants.** Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.
- 3.29. **Inspection of Procurement File.** All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.
- 3.30. **Protest by Respondent.** Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows:
<https://www.tn.gov/generalservices/procurement.html>. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE

Efforts to Achieve Diversity Business Participation

The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)

"Service-disabled veteran-owned business" means a service-disabled veteran-owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)

"Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

"Disabled Business Enterprise (DSBE)

"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

Instructions

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at:

<https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215>
directory or by calling Go-DBE toll free at 866-894-5026.

RESPONDENT'S DIVERSITY UTILIZATION PLAN

Respondent's Company Name:		
Solicitation Event Name:	Event Number:	
Respondent's Contact Name:	Phone: ()	Email:
Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE		
Certifying Agency:		

Estimated level of participation by DBEs if awarded a contract pursuant to this ITB:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	% of Contract	Estimated Amount	MBE/ WBE/ SDVBE/ SBE / DSBE Designation	Currently Certified (Yes or No)
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>

We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: _____

Date: _____

Printed Name and Title of Signatory _____



4. SCOPE:

- 4.1. **Scope.** The Contractor shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.

4.2. Warranty Clauses:

- 4.2.1. **Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- 4.3. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

5. TERM OF CONTRACT:

5.1. Term of Contract.

- 5.1.1. This Contract shall be effective on May 24, 2022 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 5.1.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 5.1.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.

6. PAYMENT TERMS AND CONDITIONS:

- 6.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed four hundred thousand nine hundred and ninety-five dollars (\$400,995.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- 6.2. Compensation Firm. The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The prices identified includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- 6.3. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- 6.4. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. The Contractor shall invoice the State upon shipment of goods. All payments are due within 45-days of the date of the invoice.
 - a) Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

1. Invoice number (assigned by the Contractor);
2. Invoice date;
3. Contract number (assigned by the State);
4. Purchase order number (assigned by the State);
5. Customer account name: The State of Tennessee;
6. Customer account number (assigned by the Contractor to the above-referenced Customer);
7. Contractor name;
8. Contractor Tennessee Edison supplier ID number;
9. Contractor contact for invoice questions (name, phone, or email);
10. Contractor remittance address;
11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
13. Applicable payment methodology of each good or service invoiced;
14. Amount due for each compensable unit of good or service; and
15. Total amount due for the invoice period.

b) Contractor's invoices shall:

1. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
2. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
3. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal Property taxes, or income taxes; and
4. Include shipping or delivery charges only as authorized in this Contract.

The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

- 6.5. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- 6.6. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Contract, to not constitute proper compensation for goods delivered or services provided.
- 6.7. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

- 6.8. **Prerequisite Documentation.** The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a) The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

7. **MANDATORY TERMS AND CONDITIONS:**

- 7.1. **Substitute Items Offered by the Contractor.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Contractor may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date Contractor requests to make the substitution. Contractor shall not make any substitutions for awarded items without the State's prior, written approval. Contractor shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.
- 7.2. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.
- 7.3. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. All quotations shall be F.O.B. destination.
- 7.4. **Required Approvals.** The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- 7.5. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below

or any other address provided in writing by a party.

The Contractor:

Illumina, Inc.
Zach Johnson
5200 Illumina Way, San Diego CA 92122
zjohnson@illumina.com
858-255-9401

State of Tennessee:

Lindsay Oliveras
Department of Health
710 James Robertson Parkway, Andrew Johnson Tower, 5th Floor
Nashville TN 37243
615-532-7148
Lindsay.Oliveras@tn.gov

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- 7.6. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
- 7.7. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- 7.8. **Termination for Convenience.** The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- 7.9. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to

immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

- 7.10. **Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

- 7.11. **Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- 7.12. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- 7.13. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html>, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be

maintained by the Contractor and made available to State officials upon request.

- b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- 7.14. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- 7.15. **Monitoring.** The Contractor's activities conducted and records maintained, pursuant to this Contract, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- 7.16. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
- 7.17. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- 7.18. **Independent Contractor.** The parties shall not act as employees, partners, joint ventures, or associates of one another. The parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee

relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.

- 7.19. **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- 7.20. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- 7.21. **Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; or (ii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- 7.22. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all third-party claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice.

This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

7.23. **HIPAA Compliance.** When applicable, the State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c) The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

7.24. **Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

7.25. **Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 -- 608. Compliance with applicable registration requirements is a material requirement of this Contract.

7.26. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d) have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

7.27. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for

in this Contract as the result of a Force Majeure Event.

- 7.28. **State and Federal Compliance.** The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- 7.29. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -- 408.
- 7.30. **Entire Agreement.** This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.
- 7.31. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- 7.32. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- 7.33. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
 - c) any clarifications of or addenda to the Contractor's response seeking this Contract;
 - d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;
 - e) any technical specifications provided to respondents during the procurement process to award this Contract; and,
 - f) the Contractor's response seeking this Contract.

- 7.34. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

7.35. Insurance Requirements:

- 7.35.1. **Insurance.** Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. The Contractor agrees to keep coverage requirements in place during the term of the agreement.

The COI shall be signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. Upon reasonable request, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) authorized by the TDCI to transact business in the State of Tennessee; and (b) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible that exceeds fifty thousand dollars (\$50,000), the Contractor shall provide notification of the deductible amount in the certificate of insurance to the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only

relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

To the extent available, all coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

7.35.2. Workers' Compensation and Employer Liability Insurance.

- a) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
- b) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
- c) In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- d) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - 1. The Contractor employees fewer than five (5) employees;
 - 2. The Contractor is a sole proprietor;
 - 3. The Contractor is in the construction business or trades with no employees;
 - 4. The Contractor is in the coal mining industry with no employees;
 - 5. The Contractor is a state or local government; or
 - 6. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

7.35.3. Commercial General Liability Insurance.

- a) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business

contract).

- b) The Contractor shall maintain bodily injury/property damage with a combined single-limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage

7.35.4. **Automobile Liability Insurance.** The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles). The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

7.35.5. Professional Liability Insurance.

- a) Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
- b) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
- c) If the Contract involves the provision of services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

7.36. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

7.37. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

8. SPECIAL TERMS AND CONDITIONS:

8.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and

conditions shall be subordinate to the Contract's other terms and conditions.

8.2. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

8.3. **Equal Opportunity.** During the performance of this Contract, the Contractor agrees as follows:

a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

1. Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
2. Layoff or termination;
3. Rates of pay or other forms of compensation; and
4. Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c) If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

8.4. **Lobbying.** The Contractor certifies, to the best of its knowledge and belief, that:

a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c) The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

8.5. **Federal Funding Accountability and Transparency Act (FFATA).** This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required. The Contractor shall comply with the following:

a) Reporting of Total Compensation of the Contractor's Executives.

1. The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.) As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.
2. Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b) The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c) If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
 - d) The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

8.6. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** If applicable and as required by 2 CFR 200.216, Grantee is prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. As described in Public Law 115-232, Section 889, "covered telecommunications equipment" is as follows:

- a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c) Telecommunications or video surveillance services provided by such entities or using such equipment.
- d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

8.7. Procurement of Recovered Materials.

- a) In the Performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.
- b) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Addendum:

ADD THE FOLLOWING AS NEW ITEMS:

9. ADDED DEFINITIONS

Response Time and On-site Support. Contractor shall use commercially reasonable efforts to respond to State requests for service within the time period specified in the Service Contract. All requests for service must be made through Contractor. The Contractor shall provide service and support by remote instruction via telephone, Internet or email, mailing to State replacement parts or test equipment, exchanging State's component equipment with loaner equipment while repairs are being made, and deploying service or applications personnel for on-site services. Other than installation and preventative maintenance visits, Contractor shall determine in its sole discretion whether and when any personnel or replacement parts or equipment are to be sent to State's site. Contractor shall respond to State's request for support in accordance with the average response time specified in the Service Contract. Contractor shall provide a minimum number of on-site support visits as specified in the Service Contract if the State has identified a specific need that can be fulfilled by the visit and if the State has made reasonable accommodation for scheduling the visit. If no need is identified and the timing of any visit cannot be scheduled at a mutually-agreeable date and time, Contractor may provide fewer visits than prescribed in the Service Contract.

5. Hardware Support. During the Term, Contractor shall use commercially reasonable efforts to install mandatory Hardware updates in accordance with the terms of the Service Contract as such materials become available for distribution. Whether a Hardware update is mandatory shall be determined by Contractor in its sole discretion. Contractor shall reschedule Hardware updates to coincide with preventive maintenance visits. If Purchaser requests that such Hardware updates occur at a time or date other than during preventive maintenance visits, Seller may, at its sole discretion, charge Purchaser for any costs and expenses incurred in connection with such Hardware update visit. All updated] Hardware and components thereof and Purchaser's use of the same shall be subject to this Agreement and the Original Terms.

6. Hardware Repairs. Contractor shall use commercially reasonable efforts to repair Covered Hardware reported by State and deemed inoperable by Contractor's State Solutions personnel. Contractor's shall provide parts and labor according to the terms of the Service Contract and is limited to only repair or replacement of Contractor branded parts originally provided by Contractor to State. All repaired or replaced items and State's use of the Covered Hardware including the repaired or replaced components shall be subject to this Contract. The Contractor shall warrant that repaired or replaced items conform to the Specifications for ninety (90) days from the date of installation or repair of such repaired or replaced item.

7. Documentation Updates. Contractor shall use commercially reasonable efforts to provide updates to Documentation according to the terms of the Service Contract as they become available for distribution. Whether a Documentation update is mandatory shall be determined by Contractor in its sole discretion. All updates to Documentation and State's use of the Documentation shall be subject to this Agreement and the Original Terms.

8. Replacement Parts. All replacement parts and components provided by Contractor shall be new or refurbished, in Contractor's sole discretion, and shall be furnished on an exchange basis. All Hardware or components thereof or other parts removed for replacement shall become the property of Contractor. All replaced parts and components and State's use of the Covered Hardware including the replaced parts and components shall be subject to this Agreement and the Original Terms. t The Contractor shall warrant that repaired or replaced items conform to the Specifications for ninety (90) days from the date of installation or repair of such repaired or replaced item.

9. Loaner Hardware. Contractor may choose to provide, in its sole discretion, loaner hardware or components to State to substitute for the Covered Hardware or a component thereof, while service is being provided. Contractor will be responsible for all costs associated with the shipment of such loaner hardware or components to State's Site. Loaner hardware or components shall be certified by Contractor's State Solutions using the same criteria as used for new hardware or components. Loaner hardware or components shall remain the sole property of Contractor, and must be returned within thirty (30) days of Contractor's request. State's use of loaner hardware or components shall be subject to Contractor's current terms and conditions of sale that apply to such loaner hardware or component, as set forth in this Contract.

10. Preventative Maintenance Visits. Contractor shall provide a preventative maintenance on-site visit according to the terms of the Service Contract, which may result in two to three days of system down time to State. Contractor shall cooperate with State to schedule such preventative maintenance visits at a time that is mutually convenient for both parties. All such preventative maintenance services will be provided by Contractor designated service personnel. All travel, labor and parts/materials expenses associated with prescribed preventative maintenance visits, visits to service, repair or replace covered items, and applications support visits as provided for in the Service Contract are included in the price set forth for such Service Contract. Preventative maintenance services include testing and adjusting the Covered Hardware to the Specifications. If any preventative maintenance visit within the Term is precluded due to State's inability to provide a sufficient time period for such services and down time, Contractor shall not be obligated to provide a substitute preventative maintenance visit. Contractor shall not be liable for any economic, consequential, incidental, special or other damages or losses of any kind resulting from the down time during such preventative maintenance visits.

11. State Responsibilities. a. Proper Use: The performance of Covered Hardware when operated in corrosive environments, or in conditions, or in a manner, outside of the Specifications including Contractor's site requirements found in the Documentation or not in accordance with its Documentation may have their performance adversely affected, and are therefore not guaranteed hereunder. The State agrees to use the Covered Hardware in a safe and reasonable manner pursuant to the Documentation and the Original Terms.

b. Access: The State will provide Contractor with access to the Covered Hardware along with adequate working space and facilities within a reasonable distance of the Covered Hardware. Access will also be provided to all information and facilities that are reasonably necessary for Contractor to service the Covered Hardware.

c. Data Back-up and Security: The State is responsible for maintaining a procedure to reconstruct any lost or altered files, data, or programs, as well as for the security of all confidential, proprietary, and classified information.

d. Networking: The State is responsible for maintaining all computer networking as it relates to the integration of any components of the Covered Hardware outside of such system and within the State's network.

e. Representative: A representative of State shall be present on-site at all times service is being performed by Contractor's designated service personnel.

f. Toxic/BioHazardous Substances: The State will notify Contractor in writing if any Covered Hardware is used for analysis of toxic, hazardous or dangerous substances. Such Covered Hardware must be decontaminated by State in accordance with Contractor's decontamination procedures and State shall fax a completed and executed Decontamination Certificate to State Solutions before any service may be performed on the Covered Hardware.

g. Environment: The State agrees to provide Contractor's designated service personnel with a safe environment for their work.

h. Disposal of Waste Products: The State is responsible for the proper disposal of waste products that result from maintenance and service work on the Covered Hardware.

i. Facilities: The State is responsible for ensuring that the Site will adhere to Contractor's site requirements found in the Documentation or Specifications. To the extent that it is not caused by the Contractor, any material deviation from Contractor's site requirements affecting the proper functioning of the Covered Hardware shall relieve Contractor of its obligations under this Contract.

12. Exclusions and Restrictions. The terms of this Agreement cover maintenance and repair for conditions that result from normal use and operation as described in the Documentation for the Covered Hardware. Contractor will not be obligated to perform maintenance or repair on any Covered Hardware which, in its reasonable judgment: a. Has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation other than installation performed by Contractor authorized personnel, improper storage, improper handling, or use contrary to any instructions issued by Contractor or has been used in any manner inconsistent with its Documentation:

b. Has been repaired, altered, disassembled, reassembled, or damaged as a result of modifications made to the Covered Hardware that were not authorized in writing by Contractor;

c. Has been damaged by environmental conditions at the Site;

d. Has not been installed, operated, repaired and maintained in accordance with its Documentation or has been damaged due to operators failing to perform standard operating procedures or routine maintenance as prescribed in the applicable Documentation;

e. Has been moved from the Site by persons not expressly authorized in writing by Contractor;

f. Has been used with any third party software, hardware, or item including, without limitation, reagent which has not been previously approved in writing by Contractor;

g. Has been exposed to Bio-safety Level 3 or 4 agents (as defined by The Occupational Safety and Health Administration);

h. Has been exposed to radioactivity, and has not been decontaminated to below exempt levels; or

i. Has been damaged due to an act of Force Majeure as defined herein.

13. Services by Third Parties on Contractor's Behalf. Contractor reserves the right to retain or contract outside vendors of its choosing to provide service and support hereunder. In any instance where the terms and conditions of such vendor's service, support, and warranty agreement conflicts with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall govern; provided, however that any exclusions on coverage contained in an OEM vendor's terms and conditions shall remain in full force and effect.

14. Relocation of Hardware. All Service Contracts terminate automatically with immediate effect and without the need for notice to State if Covered Hardware is moved to a different Facility. Upon such termination, Contractor will credit State's account with Contractor an amount equal to the unused portion of the Service Contract; provided that, State pre-paid for the Service Contract in full. If Contractor conducts the move of the Covered Hardware on State's behalf then Contractor and State will enter into a new Service Contract for such Covered Hardware at the new Facility.

15. Export of Hardware. State agrees not to move or relocate Covered Hardware outside of the country to which Contractor originally shipped it without the expressly written authorization of an officer of Contractor.

16. Recertification Requirement. Hardware not under an existing Service Contract is only eligible for a Service Contract if Contractor has inspected the Hardware and its ancillary equipment and provided a written notice to State that the Hardware is eligible for a Service Contract ("Recertification Requirement"). State acknowledges that Hardware may have to be repaired, at State's sole expense, prior to being eligible for a Service Contract. Accordingly, Contractor recommends that State renew its existing Service Contracts prior to their expiration.

18. Early Termination of Service Contract. State or Contractor may, in its sole discretion, terminate the Service Contract early by providing 30 days prior written notice to the other, except that State must provide 120 days prior written notice to Contractor with respect to Service Contracts under which Illumina provides dedicated on-site support of State. Upon such termination, Contractor will credit State's account with Contractor an amount equal to the unused portion of the Service Contract; provided that, State pre-paid for the Service Contract in full; and provided further that, the amount of such credit will be reduced by the amount of any discount Contractor provided State as a result of Contractor purchasing a multi-year Service Contract ("Unearned Discount"). In the event State's Unearned Discount exceeds the amount of credit that Contractor would provide under this provision, Contractor will invoice State the difference and such invoice shall be paid within 30 days.

19. Non Transferable. All Service Contracts are personal to the original State of the Covered Hardware and may not be transferred or assigned to any third party.

20. Unauthorized Activities. State agrees not to, nor authorize any third party to, engage in any of the following activities: (i) disassemble, reverse-engineer, reverse-compile, or reverse-assemble the Covered Hardware or an items provided hereunder (collectively "Materials"), (ii) separate, extract, or isolate components of the Materials or subject the Materials or components thereof to any analysis not expressly authorized in the Documentation, (iii) gain access to or attempt to determine the methods of operation of the Materials, or (iv) transfer to a third-party, or grant a sublicense to, any Software or any third-party software provided hereunder. State further agrees that the contents of and methods of operation of the Materials are proprietary to Contractor and the Materials contains or embodies trade secrets of Contractor.

21. Limited Liability. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CONTRACTOR OR ITS SUPPLIERS BE LIABLE TO STATE OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH, WITHOUT LIMITATION, THE SALE OF THE COVERED HARDWARE OR SERVICE CONTRACT, THE USE OF THE COVERED HARDWARE, THE ITEMS AND SERVICES PROVIDED HEREUNDER, CONTRACTOR'S PERFORMANCE HEREUNDER OR ANY OF THESE TERMS AND CONDITIONS, HOWEVER ARISING OR CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). TO THE EXTENT PERMITTED BY LAW, CONTRACTOR'S TOTAL AND CUMULATIVE LIABILITY TO STATE OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION, THE COVERED HARDWARE OR ITEMS PROVIDED HEREUNDER (INCLUDING USE THEREOF), THE SERVICE CONTRACT, THE SERVICES PROVIDED HEREUNDER, AND CONTRACTOR'S PERFORMANCE HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID TO CONTRACTOR FOR THE SERVICE CONTRACT AND BILLABLE SERVICES.

22. Limitations on Warranties. TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO THE EXPRESS WARRANTIES MADE IN THESE TERMS AND CONDITIONS CONTRACTOR MAKES NO (AND EXPRESSLY DISCLAIMS ALL) WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE COVERED HARDWARE, THE ITEMS PROVIDED HEREUNDER, THE SERVICE CONTRACTS, AND THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.



MiSeq Service and Maintenance

Specifications

The Tennessee Department of Health Laboratory is seeking service and maintenance for six (6), Illumina MiSeq instruments used to sequence Deoxyribonucleic acid (DNA) of a bacterial or viral organism for identification or surveillance purposes. The serial numbers for each instrument that will require service during this contract period are as follows: -

M03143

M03917

M04720

M05042

M05283

M05419

Definitions:

- a. **Maintenance Service:** Service performed when the instrument malfunctions and needs service/professional repair.
- b. **Preventative Maintenance:** Annual Maintenance performed to keep an instrument functioning without errors.
- c. **Preventative Maintenance Kits:** A kit containing a replacement air filter and syringe.
- d. **Reagent Kits:** Illumina MiSeq reagent cartridge (v2 500 cycle or v3 600 cycle) containing all pre aliquoted reagents for running a Whole Genome Sequencing run of prepared specimens, and the bottle of running buffer and a flow cell.

Service and Maintenance Requirements:

- 1) The Supplier must provide maintenance service to six (6), MiSeq instruments.
- 2) The service must include one, (1) preventative maintenance inspection per year for each instrument and must provide any necessary service to each instrument between inspections.
- 3) The Preventative Maintenance Kits will be provided by the Supplier.

- 4) Service and Maintenance must be performed by an Illumina trained service engineer.
- 5) All replacement parts must be new Illumina replacements and provided at no charge.
- 6) Any Reagent Kits wasted due to instruments failure must be replaced at no cost to the lab.
- 7) On-site maintenance will be scheduled between the lab and the Supplier.
- 8) The Supplier must provide service calls within seventy-two (72) hours of request. Under unforeseen circumstances (such as COVID-19), we will work with the Supplier to facilitate the service schedule.
- 9) The Supplier must provide all travel, labor, equipment, and parts for unlimited on-site maintenance and repair.
- 10) All service calls must be performed during the lab's normal business hours of 8.00am - 4.30pm, (CST) Monday-Friday, excluding holidays as determined by the Commissioner of Human Resources.
- 11) A signed service report must be e-mailed to the Molecular Biology Department at Nashville Central Laboratory within forty-eight (48) hours of a service completion to document the service provided. The contacts will be:

Linda Thomas. Molecular Biology Department Manager.

linda.thomas@tn.gov

615 262 6463

Christina Moore. Whole Genome Sequencing Supervisor.

christina.moore@tn.gov

615 262 6398

- 12) The Supplier must provide software updates when they become available at no additional charge.
- 13) The Supplier must provide telephonic technical support for minor problems. If a resolution is not achieved through telephonic troubleshooting, a service engineer will be scheduled within forty-eight (48) hours to inspect the instrument and provide any required repairs.

Location

1. All services must be completed on-site at: -

The Nashville Central Laboratory

630 Hart Lane

Nashville, TN 37216

2. All kits and replacement parts must be shipped to Nashville Central Laboratory at the address above at no cost to the Laboratory.

Special Contract Request 5960

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Upload the completed document and route for approvals by selecting the appropriate SCR e-Form type in Edison. For additional guidance, please see the Special Contracts Request e-Form Job Aid available online at the following:

<https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

APPROVED [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]		APPROVED [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]	
CHIEF PROCUREMENT OFFICER	DATE	COMPTROLLER OF THE TREASURY	DATE

Approval of the SCR does not constitute approval of the final contract.

Request Tracking #	HL00017961 HL00017964 HL00017125 HL00017038 HL00017548
1. Contracting Agency	Health
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Christina Moore Linda Thomas 630 Hart Lane Nashville, TN 37243 Christina.Moore@tn.gov 615 262 6398 Linda.Thomas@tn.gov 615 262 6463

Request Tracking #	HL00017961 HL00017964 HL00017125 HL00017038 HL00017548
4. Brief Goods or Services Caption	Instrument Service & Maintenance contract for 6, Illumina MiSeq instruments.
5. Description of the Goods or Services to be Acquired	An annual preventative maintenance service for 6 MiSeq instruments provided by an Illumina trained service engineer, and instrument service and repair as needed. Replacement reagents and parts to be provided with no additional charge. Access to Illumina technical support for minor instrument run issues.
6. Proposed Contractor	Illumina. Inc
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	Zach Johnson Illumina Inc. 5200 Illumina Way San Diego, CA 92122-4616 858 255 9401 zjohnson@illumina.com
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months
9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 400,995.00

Request Tracking #	HL00017961 HL00017964 HL00017125 HL00017038 HL00017548
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/>
15. Cost Determination Used - How did agency arrive at the estimate of expected costs?	Vendor quote
16. Explanation of Fair and Reasonable Price - Explain how agency determined that price is fair and reasonable	Service through Illumina includes reagent replacement when reagents or the instruments are determined to be the cause of a run failure. Specialty Underwriters (SU) does not provide this option.
17. Documentation of Discussions with Contractor - How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Email communication.
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	In order to continue to perform Whole Genome Sequencing testing to meet the requirements set by the Federal ELC grants, the Illumina MiSeq instruments need to have a service agreement that keeps them in optimal working condition.
19. Proposed contract impact on current State operations	This service contract will allow Lab Services to continue testing with less downtime when instrument failure occurs or when the instruments need annual preventative maintenance performed.

Request Tracking #	HL00017961 HL00017964 HL00017125 HL00017038 HL00017548
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	The Lab uses the MiSeq instruments in the Whole Genome Sequencing section which, as required by the Centers for Disease Control and Prevention (CDC), identifies, and confirms bacteria, viruses, and other pathogens at the genome level. All 6 MiSeq instruments are currently covered by two maintenance contracts which both end on September 25 th , 2021. We need to keep these instruments covered to ensure they have access to service calls and preventative maintenance visits in a timely manner. In addition, if the instrument hardware or software fails during a run, the reagent cartridge will be ruined. The reagent cartridges cost from \$1,100.00 to \$1,600.00 each. Illumina is the only authorized party to provide service and the only company that can provide a reagent kit replacement as part of a service contract. As such, Illumina is the only company that has the service to meet the State's needs.
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	Illumina is developer, manufacturer, and marketer of life science tools. They were incorporated in California in April 1998 and reincorporated in Delaware in July 2000.

Lindsay R. Oliveras

From: edison.erp@tn.gov
Sent: Thursday, July 29, 2021 1:13 PM
To: Lindsay R. Oliveras
Subject: [Form Approval] Form 5960 (SCR_TECH) has been Approved

Form 5960 (SCR_TECH) has been approved. Details are shown below:

Subject: 34301 Miseq Maintenance
Priority: 3
Due Date:
Requester: lind0914001

Click on the URL to access the form:

https://hub.edison.tn.gov/psp/paprd/EMPLOYEE/ERP/c/MANAGE_FORM.FORM_ADD.GBL?Page=FORM&Action=U&SEQ_NBR=5960

(This message was automatically generated by Form and Approval Builder on 2021-07-29 at 13.12.46.000000. Please do not reply to this email.)